

1 HONORABLE BENJAMIN H. SETTLE
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SYNTRIX BIOSYSTEMS, INC., a Delaware)
11 corporation,)
12 v.) Plaintiff,) No. 3:10-cv-05870-BHS
13 ILLUMINA, INC., a Delaware Corporation,)
14 Defendant.) **PLAINTIFF SYNTRIX BIOSYSTEMS'**
15 **RESPONSE TO ILLUMINA'S**
16 **MOTION TO SEAL DOCUMENTS**
17 **RELATED TO ILLUMINA'S MOTION**
18 **FOR SUMMARY JUDGMENT**

19 **MOTION**

20 Pursuant to Civil Local Rules 5(g) and 7(d)(2), Plaintiff Syntrix Biosystems, Inc.
21 ("Syntrix") respectfully responds to Illumina, Inc.'s ("Illumina") Motion to Seal Documents
22 related to Illumina's Motion for Summary Judgment on Syntrix's Patent Claim ("Illumina's
23 Motion"). Syntrix requests that the following documents be sealed because Syntrix believes that
24 these exhibits contain confidential information of Syntrix and should be designated as
25 confidential under the parties' confidentiality agreement.

26 1. The unredacted version of Illumina's Motion, Dkt. # 101.

PLAINTIFF SYNTRIX BIOSYSTEMS' RESPONSE TO
ILLUMINA'S MOTION TO SEAL DOCUMENTS RELATED TO
ILLUMINA'S MOTION FOR SUMMARY JUDGMENT - 1
Case No. 3:10-cv-05870-BHS

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- 1 2. Exhibit C to the Second Declaration of Erick Ottoson in support of Illumina's
- 2 Motion, Dkt. # 102, containing excerpts from the Expert report of Dr. Metzker
- 3 (rebuttal): Pages 171 and 182-87.
- 4 3. Exhibit D to the Second Declaration of Erick Ottoson in support of Illumina's
- 5 Motion, Dkt. # 102, containing excerpts from the Deposition transcript of Dr.
- 6 Metzker: Pages 181-82.
- 7 4. Exhibit E to the Second Declaration of Erick Ottoson in support of Illumina's
- 8 Motion, Dkt. # 102, containing excerpts from the Deposition transcript of Dr.
- 9 Zebala: Pages 147, 618-21, 634, 640-41, and 662-63.

11 Pursuant to the Protective Order issued by the Court on June 20, 2011, both parties are
12 permitted to file materials designated as confidential by the other party. Dkt. # 49 at p. 10. Such
13 documents are to remain under seal upon Court approval. *Id.* When, as here, a protective order
14 exists, and a party files a confidential document it obtained from another party, the party who
15 designated the document confidential must provide a specific statement of the applicable legal
16 standard and the reasons for keeping a document under seal, with evidentiary support from
17 declarations where necessary. Local Rules W.D. Wash. LCR 5(g)(3). This requirement may be
18 satisfied in the designating party's response to the motion to seal. *Id.*

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21 There is a "strong presumption of public access to the court's files." *Id.* at LCR 5(g).
22 However, this presumption may be overcome by providing "sufficiently compelling reasons"
23 overriding the public policies favoring disclosure. *In re Midland Nat'l Life Ins. Co.*, 686 F.3d
24 1115, 1119 (9th Cir. 2012). "Protection of trade secrets is a compelling reason for sealing

1 documents from public disclosure.” *D.C. v. Sears, Roebuck & Co.*, 2007 U.S. Dist. LEXIS
 2 66391 at *3 (W.D. Wash. Sept. 7, 2007).

3 As shown in the supporting Declaration of Syntrix’s President and CEO, Dr. John Zebala,
 4 there are sufficiently compelling reasons to seal the documents described herein.
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6 **1. Pages 171 and 182-87 of the Expert Report of Dr. Metzker (rebuttal).** These
 7 pages include discussion of Dr. John Zebala’s combinatory approach using synthetic matrix
 8 technology to get ever increasing numbers of different compounds attached. Zebala Decl. ¶ 3.
 9 Details contained in the identified pages of Dr. Metzker’s Report are taken from Dr. Zebala’s
 10 unpublished experiments and results from his notebook. *Id.* Such information remains
 11 undisclosed to the public and thereby retains significant economic value. *Id.* Syntrix considers
 12 this information confidential, and it has only been shared pursuant to confidentiality agreements.
 13
Id.

14 **2. Pages 181-82 of the Deposition Transcript of Dr. Metzker.** These deposition
 15 pages contain discussion about experiments and calculations contained in Dr. Zebala’s notebook
 16 pertaining to spinning out porous coating. Zebala Decl. ¶ 4. As noted above, the experiments
 17 and calculations contained in Dr. Zebala’s notebook are unpublished and possess significant
 18 value to Syntrix. *Id.* Consequently, Syntrix considers this information confidential. *Id.*
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21 **3. Pages 147, 618-21, 634, 640-41, and 662-63 of the Deposition Transcript of
 22 Dr. Zebala.** These pages contain references to experiments and results from Dr. Zebala’s
 23 unpublished lab notebook. Zebala Decl. ¶ 5. For the reasons outlined above, Syntrix treats such
 24 information as confidential. *Id.* at ¶¶ 3-4.
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1 As part of this response, and for the reasons listed above, Syntrix requests that the Court also
2 order the sealing of Illumina's unredacted Motion.

3 Syntrix considers all information described in this response and the referenced documents,
4 reports, and transcripts to be confidential. Syntrix has only provided this information for use in
5 this litigation pursuant to the protective order agreed to by the parties and filed by the Court.

6 Syntrix believes that disclosure of this information would undermine efforts to maintain its
7 secrecy and thereby eliminate its value. Accordingly, Syntrix respectfully requests that the Court
8 enter an order sealing: (1) the unredacted version of Illumina's Motion; (2) Exhibit C to the
9 Second Declaration of Erick Ottoson in support of Illumina's Motion, containing excerpts from
10 the Expert report of Dr. Metzker (rebuttal): Pages 171 and 182-87; (3) Exhibit D to the Second
11 Declaration of Erick Ottoson in support of Illumina's Motion, containing excerpts from the
12 Deposition transcript of Dr. Metzker: Pages 181-82; and (4) Exhibit E to the Second Declaration
13 of Erick Ottoson in support of Illumina's Motion, containing excerpts from the Deposition
14 transcript of Dr. Zebala: Pages 147, 618-21, 634, 640-41, and 662-63.

17 Dated: December 26, 2012

18 Respectfully submitted,

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CERTIFICATE OF CONFERENCE

In compliance with LCR 5(g) and the procedure outlined in the Protective Order, counsel for Plaintiff, Michael Samardzija, Derek Gilliland, and others, conferred via email with counsel for Illumina, Diane Meyers, Eric Fraser, and others, on December 17 and 18, 2012, about the need to file materials cited in Illumina’s Motion for Partial Summary Judgment under seal. After conferring, the parties were able to minimize the material that needed to be filed under seal by agreeing to withdraw some confidentiality designations and agreeing to redacted versions of some documents. However, Syntrix maintains that the documents described above should be filed under seal, as they constitute confidential Syntrix information. Accordingly, Syntrix files this Response to Illumina’s Motion to Seal under Local Rule 5(g) and per the Parties’ agreement.

DATED December 26, 2012 in Seattle, Washington.

s/s Jeffrey G. Frank
Jeffrey G. Frank

PLAINTIFF SYNTRIX BIOSYSTEMS' RESPONSE TO
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Certificate of Service

The undersigned certifies that on *Wednesday, December 26, 2012*, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties:

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DATED December 26, 2012 in Seattle, Washington.

s/s Jeffrey G. Frank
Jeffrey G. Frank

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